

Summary of Recent Statements by the U.S. Department of Justice

April 18, 2011

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SB923

Background

The U.S. Department of Justice has taken steps in at least two instances this year to clarify its October 2009 memo on prosecution of marijuana cases in states that have enacted medical marijuana laws. The Department has provided written guidance to the both city of Oakland and the state of Washington as they governments considered changes to local and state marijuana-related laws.

In California

The City of Oakland last summer approved an ordinance to license up to four large-scale indoor marijuana-growing operations. The original ordinance put no size limit on the businesses, but required that they have \$3 million worth of insurance, hire security, pay a \$211,000 annual permit fee, and pay taxes and back taxes.

The city suspended its licensing plans in December in order to consider revisions to the ordinance, based on legal concerns that were raised by the Alameda County District Attorney. City Attorney John Russo in January asked the Department of Justice for further guidance

In Washington

On April 13, 2011, Washington Governor Christine Gregoire asked the Department of Justice for clarification of the agency's position, in light of the 2011 Legislature's passage of a bill to allow for state licensing and inspection of marijuana producers, processors, and dispensers.

Washington currently allows people with qualifying medical conditions to use marijuana for medical purposes and a caregiver to provide the marijuana, but — like Montana — does not have a licensing or regulatory process for growers and dispensaries. SB 5073 would create that structure in Washington.

Federal Response

U.S. attorneys for the respective jurisdictions sent virtually identical letters stating that the Justice Department remains committed to enforcing the federal Controlled Substances Act (CSA). Marijuana is Schedule 1 controlled substance; under the federal law, growing, distributing, and possessing marijuana is a federal crime.

Justice Department officials informed both Governor Gregoire and City Attorney Russo that the department would "vigorously" enforce the federal law against individuals and organizations that participate in unlawful manufacturing and distribution of marijuana, even when those activities are allowed under state law. The letters indicated that the Justice Department may take legal action — including civil fines or criminal prosecution — related to:

- manufacturing or distributing marijuana or possessing marijuana with the intent to distribute;
- leasing, renting, maintaining, or using property to manufacture, store, or distribute marijuana; and
- financial activity involving the movement of drug proceeds.

In addition, the Justice Department told Governor Gregoire that state employees who conduct activities required under the Washington legislation would not be immune from liability under the CSA.



U.S. Department of Justice

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Honorable Christine Gregoire
Washington State Governor
P.O. Box 40002
Olympia, Washington 98504-0002

April 14, 2011

Re: Medical Marijuana Legislative Proposals

Dear Honorable Governor Gregoire:

We write in response to your letter dated April 13, 2011, seeking guidance from the Attorney General and our two offices concerning the practical effect of the legislation currently being considered by the Washington State Legislature concerning medical marijuana. We understand that the proposals being considered by the Legislature would establish a licensing scheme for marijuana growers and dispensaries, and for processors of marijuana-infused foods among other provisions. We have consulted with the Attorney General and the Deputy Attorney General about the proposed legislation. This letter is written to ensure there is no confusion regarding the Department of Justice's view of such a licensing scheme.

As the Department has stated on many occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the October 2009 Ogden Memorandum, we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as:

- 21 U.S.C. § 841 (making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana);
- 21 U.S.C. § 856 (making it unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances);
- 21 U.S.C. § 860 (making it unlawful to distribute or manufacture controlled substances within 1,000 feet of schools, colleges, playgrounds, and public housing facilities, and within 100 feet of any youth centers, public swimming pools, and video arcade facilities);
- 21 U.S.C. § 843 (making it unlawful to use any communication facility to commit felony violations of the CSA); and
- 21 U.S.C. § 846 (making it illegal to conspire to commit any of the crimes set forth in the CSA).

In addition, Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The Government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department could consider civil and criminal legal remedies regarding those who set up marijuana growing facilities and dispensaries as they will be doing so in violation of federal law. Others who knowingly facilitate the actions of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law. In addition, state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA. Potential actions the Department could consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any

Honorable Christine Gregoire

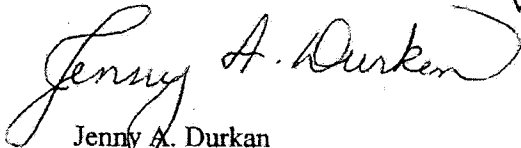
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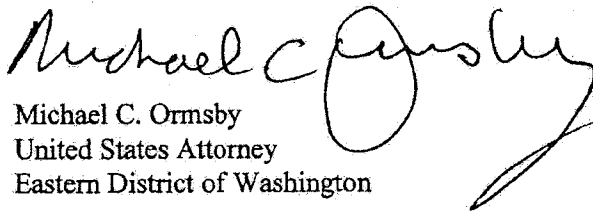
property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

We hope this letter assists the State of Washington and potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana.

Very truly yours,



Jenny A. Durkan
United States Attorney
Western District of Washington



Michael C. Ormsby
United States Attorney
Eastern District of Washington